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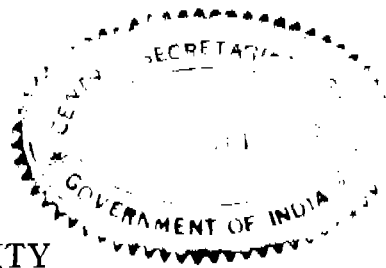
भारत का राजपत्र The Gazette of India

प्रसिद्धाकरण
EXTRAORDINARY

भाग 2—खंड 2

PART II—Section 2

प्राधिकार से प्रकाशित
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on the 28th July, 1969:—

BILL No. 67 OF 1969

A Bill to amend the Gold (Control) Act, 1968.

Be it enacted by Parliament in the Twentieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Gold (Control) Amendment Act, 1969. Short title and commencement.

(2) It shall be deemed to have come into force on the 3rd day of July, 1969.

45 of 1968. 2. In section 5 of the Gold (Control) Act, 1968 (hereinafter referred to as the principal Act), in sub-section (2),— Amendment of section 5.

(i) in clause (a), the word “and”, occurring at the end, shall be omitted;

(ii) clause (b) shall be omitted.

Amendment
of section 8.

3. In section 8 of the principal Act, for sub-section (2), the following sub-section shall be, and shall be deemed always to have been, substituted, namely:—

“(2) Save as otherwise provided in this Act, a person may,—

(a) (i) acquire or agree to acquire the ownership, possession, custody or control of, or

(ii) buy, accept or otherwise receive or agree to buy, accept or otherwise receive,

any ornament, unless he knows or has reason to believe that such ornament, being required to be included in a declaration, has not been so included;

(b) sell, deliver, transfer or otherwise dispose of, or agree to sell, deliver, transfer or otherwise dispose of, any ornament, but shall not do so if the ornament, being required to be included in a declaration, has not been so included.”.

Amendment
of section
17.

4. In section 17 of the principal Act,—

(i) in sub-section (2), for clause (d), the following clause shall be, and shall be deemed always to have been, substituted, namely:—

“(d) shall be subject to such conditions and restrictions as may be prescribed.”

(ii) for sub-section (6), the following sub-section shall be, and shall be deemed always to have been, substituted, namely:—

“(6) (a) No application for the issue of a licence to commence or carry on business as a refiner shall be granted unless the Administrator, after making such inquiry as he may think fit, is satisfied with regard to the following matters, namely:—

(i) the security of the premises where the applicant intends to carry on business as a refiner, the suitability of such premises for being used as a refinery, and the existence therein of arrangements for the storage of gold before and after refining;

(ii) the existence, in such premises, of equipment for the manufacture of standard gold bars, or for assaying of gold, and the quality and adequacy of such equipment;

(iii) the existence, in such premises of facilities for the exercise of supervision and control by the Administrator or any other person authorised by him in this behalf;

(iv) the competence of the applicant to manufacture standard gold bars; and

(v) such other matters as may be prescribed.

(b) No application for the renewal of a licence to carry on business as a refiner shall be rejected unless—

(1) the holder of such licence has been given a reasonable opportunity of presenting his case, and

(2) the Administrator is satisfied that—

(i) the application for such renewal has been made after the expiry of the period specified therefor, or

(ii) the refinery does not continue to satisfy the matters specified in sub-clause (i), (ii), (iii) or (v) of clause (a), or

(iii) any statement made by the applicant at the time of the issue or renewal of the licence was incorrect or false in material particulars, or

(iv) the applicant has contravened any term or condition of the licence or any provision of this Act or any rule or order made thereunder or of any other law for the time being in force in so far as such law prohibits or restricts the bringing into or taking out of India of any goods (including coins, currency, whether Indian or foreign, and foreign exchange) or the dealing in such goods by way of acquisition or otherwise.

(c) Notwithstanding anything contained in clause (a) or clause (b), a licence to commence or carry on business as a refiner shall not be issued or renewed if the Administrator, after giving the applicant a reasonable opportunity of presenting his case, is satisfied that the entire volume of the refining business done, or proposed to be done, by the applicant may be conveniently done at a refinery established or run by Government or by a corporation owned or controlled by Government.

(d) Every order granting or rejecting an application for the issue or renewal of a licence shall be made in writing."

5. In section 26 of the principal Act, in clause (c), after the words "to a licensed dealer", the words "or to such other person or authority as may be specified by rule made in this behalf" shall be inserted.

Amendment of section 26.

6. In section 27 of the principal Act,—

Amendment of section 27.

(i) in sub-section (2), for clause (d), the following clause shall be, and shall be deemed always to have been, substituted, namely:—

"(d) shall be subject to such conditions and restrictions as may be prescribed.";

(ii) for sub-section (6), the following sub-section shall be, and shall be deemed always to have been, substituted, namely:—

"(6) (a) No application for the issue of a licence to commence or carry on business as a dealer shall be granted unless the Administrator, having regard to such matters as may be prescribed in this behalf and after making such inquiry in respect of those matters as he may think fit, is satisfied that the licence should be issued.

(b) No application for the renewal of a licence to carry on business as a dealer shall be rejected unless the holder of such licence has been given a reasonable opportunity of presenting his case and unless the Administrator is satisfied that—

(i) the application for such renewal has been made after the expiry of the period specified therefor, or

(ii) any statement made by the applicant at the time of the issue or renewal of the licence was incorrect or false in material particulars, or

(iii) the applicant has contravened any term or condition of the licence or any provision of this Act or any rule or order made thereunder or of any other law for the time being in force in so far as such law prohibits or restricts the bringing into or taking out of India of any goods (including coins, currency, whether Indian or foreign, and foreign exchange) or the dealing in such goods by way of acquisition or otherwise, or

(iv) the applicant does not fulfil the prescribed conditions.

(c) Every order granting or rejecting an application for the issue or renewal of a licence shall be made in writing.”;

(iii) after sub-section (6), the following sub-section shall be inserted, namely:—

“(6A) Where the Central Government, having regard to the quantity of gold produced in India and the supply therein of gold through lawful channels, is of opinion that it is necessary or expedient in the interests of the general public so to do, it may, notwithstanding anything contained in this section, direct the Administrator to restrict or reduce the number of licensed dealers to such extent and in such manner as may be specified by rules made in this behalf:

Provided that no such rules shall come into force until the expiry of the period referred to in sub-section (3) of section 114 and if, before the expiry of the said period, both Houses of Parliament agree in making any modification in the rule or both Houses of Parliament agree that the rule should not be made, the rule shall come into force only in such modified form or be of no effect, as the case may be.”.

Amendment
of section 31.

7. In section 31 of the principal Act, in the first proviso, for clause (i), the following clause shall be, and shall be deemed always to have been, substituted, namely:—

“(i) any ornament, unless he knows or has reason to believe that such ornament, being required to be included in a declaration, has not been so included.”.

Substitution
of new section for section 32.

8. For section 32 of the principal Act, the following section shall be substituted, namely:—

Possession
of primary
gold by a
licensed
dealer.

“32. (1) Save as otherwise provided in this Act, no licensed dealer shall have, at any time, in his possession or custody primary gold in any form except in the form of standard gold bars:

Provided that nothing in this section shall apply to primary gold which is obtained in the process of, or in connection with, the making, manufacturing, preparing or repairing of one or more articles

or ornaments, if the total quantity of such primary gold in the possession or custody of such dealer does not, at any time, exceed—

(a) four hundred grammes, if he does not employ any artisan,

(b) five hundred grammes, if he employs not more than ten artisans,

(c) one thousand grammes, if he employs more than ten but not more than twenty artisans,

(d) two thousand grammes, if he employs more than twenty artisans:

Provided further that the Central Government may, having regard to the needs of the trade, volume of business and the interests of the general public, increase the quantitative limits specified in the foregoing proviso.

(2) Where a licensed dealer has cut a standard gold bar and has transferred or delivered a part thereof to a certified goldsmith or an artisan for the purposes specified in section 35, he may, notwithstanding anything contained in sub-section (1), have in his possession or custody the remnant of such bar which is left with him, and in computing the quantities specified in the first proviso to sub-section (1), such remnant shall be excluded."

9. In section 39 of the principal Act,—

Amendment
of section 39.

(i) in sub-section (2), for clause (c), the following clause shall be, and shall be deemed always to have been, substituted, namely:—

"(c) shall be subject to such conditions and restrictions as may be prescribed.";

(ii) in sub-section (4), for clause (e), the following clause shall be, and shall be deemed always to have been, substituted, namely:—

"(e) a person who belongs to a prescribed category or class to which, in the opinion of the Central Government, the certificate may be granted.";

(iii) after sub-section (4), the following sub-section shall be inserted, namely:—

"(4A) Where the Central Government, having regard to the interests of the general public, is of opinion that for the continuance or development of the industry of semi-manufactures and manufactures of gold, it is necessary so to do, it may, notwithstanding anything contained in sub-section (4), by notification, empower the Administrator to entertain applications for the grant of certificates referred to in sub-section (1), from persons who possess such qualifications and fulfil such conditions as may be prescribed."

10. For section 46 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new section
for section 46.

Limits on primary gold which an artisan may have in his possession.

Amendment of section 50.

"46. The total quantity of primary gold in the possession or custody, whether individually or collectively, of the artisans employed by a licensed dealer shall not, at any time, exceed the quantitative limit applicable, under sub-section (1) of section 32, to such dealer."

11. (1) In section 50 of the principal Act, in sub-section (1),—

(a) after the words "to such goods,—", the following words shall be, and shall be deemed always to have been, inserted, namely:—

"suspend such licence or certificate, as the case may be, pending the completion of any inquiry or trial against the holder of such licence or certificate, for making such incorrect or false statement or for such contravention, as the case may be:

Provided that no such licence or certificate shall be suspended for a period exceeding ten days unless the holder thereof has been given a reasonable opportunity of showing cause against the proposed action."

(b) clause (i) shall be omitted;

(c) for clause (ii) and the proviso occurring after that clause, the following sub-section shall be, and shall be deemed always to have been, substituted, namely:—

"(1A) The Administrator may, if he is satisfied, after making such inquiry as he may think fit, that the holder of any licence or certificate issued, renewed or continued under this Act has made such incorrect or false statement as is referred to in sub-section (1) or has contravened the provisions of such law, rule or order as is referred to in that sub-section, cancel such licence or certificate, as the case may be:

Provided that no licence or certificate shall be cancelled unless the holder thereof has been given a reasonable opportunity of showing cause against the proposed action."

Substitution of new section for section 88.

Dealers, etc., when to be deemed to have abetted an offence.

12. For section 88 of the principal Act, the following section shall be substituted, namely:—

"88. (1) A dealer or refiner who knows or has reason to believe, that any person employed by him has, in the course of such employment, contravened any provisions of this Act or any rule or order made thereunder, shall be deemed to have abetted an offence against this Act:

Provided that no such abetment shall be deemed to have taken place if such dealer or refiner has, as expeditiously as possible, and in any case before the expiry of two days from the date on which he comes to know of the contravention or has reason to believe that such contravention has been made, intimated in writing to the Gold Control Officer, the name of the person by whom such contravention was made and the date and other particulars of such contravention.

(2) Whoever is deemed, under sub-section (1), to have abetted an offence against this Act, shall be punished with imprisonment for

a term which may extend to three years and shall also be liable to fine.”.

13. For section 100 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 100.

“100. (1) Every licensed dealer or refiner or certified goldsmith, as the case may be, shall, before accepting, buying or otherwise receiving any gold from any person, take such steps as are specified by the Central Government by rules made in this behalf, to satisfy himself as to the identity of the person from whom such gold is proposed to be accepted, bought or otherwise received by him.

Precautions to be taken by a licensed dealer, refiner or certified goldsmith before acquiring any gold.

(2) If on an inquiry made by a Gold Control Officer the person from whom a licensed dealer or refiner or certified goldsmith is purported to have accepted, bought or otherwise received any gold is not found at the address mentioned by the licensed dealer, refiner or certified goldsmith or at any other address ascertained from the first-mentioned address, the Gold Control Officer may call upon such dealer, refiner or certified goldsmith, as the case may be, to establish that he had taken the steps specified by the rules made under sub-section (1).

(3) If such dealer, refiner or certified goldsmith, as the case may be, omits or fails, when called upon so to do, to establish that he had taken the steps specified by rules made under sub-section (1), it shall be presumed, until the contrary is proved, that such gold was accepted, bought or otherwise received by such dealer, refiner or certified goldsmith, as the case may be, in contravention of the provisions of this Act.

(4) Nothing in this section shall apply to a petty transaction.

Explanation.—In this section, “petty transaction” means a transaction in which the total weight of any primary gold, article or ornament which is accepted, bought or otherwise received from the same person in the course of a day, does not exceed twenty-five grammes.”.

14. In section 114 of the principal Act, in sub-section (2), clause (j) shall be re-lettered as clause (k) and before clause (k) as so re-lettered, the following clause shall be inserted, namely:—

Amendment of section 114.

“(j) the types or classes of cases in which any authorisation may be made by the Administrator;”.

6 of 1969.

15. (1) The Gold (Control) Amendment Ordinance, 1969, is hereby repealed.

Repeal and saving.

45 of 1968.

6 of 1969.

(2) Notwithstanding such repeal, anything done or any action taken, including any notification, order or rule made, direction given, notice, licence or certificate issued, permission, authorisation or exemption granted, whether under the Gold (Control) Act, 1968, or the Gold (Control) Amendment Ordinance, 1969, shall, in so far as it is not inconsistent with the provisions of the Gold (Control) Act, 1968, as amended by this Act, be deemed to have been done, taken, made, given, issued or granted, as the case may be, under the corresponding provisions of the Gold (Control) Act, 1968, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Bill seeks to replace the Gold (Control) Amendment Ordinance, 1969, by which the Gold (Control) Act, 1968, was amended.

2. The Gold (Control) Act, 1968, was challenged before the Supreme Court in three writ petitions filed by licensed dealers and/or money-lenders. The Supreme Court upheld the constitutional validity of the Act as a whole and also upheld Parliament's competence to enact the legislation. Numerous provisions of the Act which were specifically impugned in the said writ petitions, also survived the challenge as to their validity. Sections 5(2)(b), 27(2)(d), 27(6), 32, 46, 88 and 100 were, however, declared by the Supreme Court to be invalid.

3. The above-mentioned provisions which have been declared by the Supreme Court to be invalid are being substituted by new provisions which have been drafted having regard to the observations made by the Supreme Court. Certain other provisions of the Act, *viz.*, sections 17(2)(d), 17(6) and 39(2)(c), which are similar in nature, substance or language to those which have been declared by the Supreme Court to be invalid, are also being modified in the light of the observations made by the Supreme Court. Opportunity is also being taken to amend some other provisions of the Act, *viz.*, sections 8(2), 26, 31, 39(4), 50 and 114, in the light of the experience gained in the working of the Act.

P. C. SETHI.

New Delhi;
The 18th July, 1969.

RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 1/47/69-GCII.(1), dated the 18th July, 1969 from Shri Prakashchand B. Sethi, Minister of State in the Ministry of Finance to the Secretary, Lok Sabha.]

The Vice-President acting as President having been informed of the subject matter of the Gold (Control) Amendment Bill, 1969, namely, to amend the Gold (Control) Act, 1968, has recommended, under clause (3) of article 117 of the Constitution, the Bill for consideration by the Lok Sabha.

FINANCIAL MEMORANDUM

The Bill which seeks to replace the Gold (Control) Amendment Ordinance, 1969, does not contain any provision which involves any expenditure from the Consolidated Fund of India. The implementation of the provisions of the Bill, would, however, necessitate the deployment of some staff.

2. The staff required for the implementation of the provisions included in this Bill is already in position. The annual recurring expenditure on the requirement of personnel is of the order of Rs. 30 lakhs. As against the said expenditure, there is an annual income of Rs. 15 lakhs (approximately). The net recurring annual expenditure on the enforcement of Gold Control is of the order of Rs. 15 lakhs.

3. The Bill would not require any addition to the staff which is already in position. Therefore, the Bill, if enacted, would not involve any expenditure on the requirement of personnel and finances in addition to what is being incurred at present on the enforcement of Gold Control.

4. The Bill does not involve any non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill provides for the framing of rules under section 114 of the Gold (Control) Act, 1968 with regard to the following matters, namely:—

(i) conditions and restrictions to which licences issued to dealers or refiners or certificates issued to certified goldsmiths shall be subject;

(ii) additional matters which should be taken into consideration before disposing of an application for the grant of a licence to commence or carry on business as a refiner;

(iii) person or authority to whom gold recovered during the course of silver refining may be disposed of;

(iv) matters which shall be taken into consideration before granting or rejecting an application for the issue or renewal of a licence to commence or carry on business as a dealer;

(v) additional category or class of person who shall be eligible to apply for the grant of a certificate referred to in section 39;

(vi) qualifications on the possession of which and conditions on the fulfilment of which an application for the grant of a certificate to a person, who is not covered by any of the category specified in section 39(4) may be entertained;

(vii) steps which a licensed dealer or refiner or certified goldsmith should take to satisfy himself as to the identity of the person from whom any gold is proposed to be accepted, bought or otherwise received by him;

(viii) types or clauses of cases in which any authorisation may be made by the Administrator.

2. Clause 6 of the Bill seeks to insert a new sub-section, namely sub-section (6A), in section 27. That sub-section empowers the Central Government to direct the Administrator to restrict or reduce the number of licensed dealers in certain circumstances. The extent to which and the manner in which such restriction or reduction may be made is to be prescribed by rules. Provisions have, however, been made to the effect that such rules shall not come into force until they have been laid before Parliament for the period specified in sub-section (3) of section 114. Parliament will thus have an opportunity to consider such rules before they come into force. If such rules are disapproved by Parliament, they would not come into force at all; and if they are modified by Parliament, they would come into force in such modified form.

3. The delegation of legislative power is, therefore, of a normal character

S. L. SHAKDHER,

Secretary.